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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/701,157

11/22/2000

George Friedman

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EXAMINER

CALLAHAN, PAUL E

ART UNIT

PAPER NUMBER

2137

MAIL DATE

DELIVERY MODE

02/26/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/701,157	<b>Applicant(s)</b> FRIEDMAN ET AL.	
	<b>Examiner</b> PAUL CALLAHAN	<b>Art Unit</b> 2137	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 December 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-95 and 108-147 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-7,9-39,55-95,108-128,148 and 149 is/are allowed.
- 6) ☒ Claim(s) 8,40-54,129-147 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. Claims 1-149 were pending in the instant application at the time of the issuance of the previous Office Action, mailed November 30, 2007. By the latest response from the applicant, filed December 7, 2007, claims 96 to 107 have been cancelled. Therefore claims 1-95 and 108-149 remain pending and have been examined.

### ***Claim Rejections - 35 USC § 101***

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 129-147 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The preamble of claim 129 indicates that it is directed to a computer program product embodied in a memory medium that, when read out, directs a system to undertake the steps coded for. However, the medium is not explicitly claimed as being computer-readable. Therefore the claim is directed towards functional descriptive material that represents a judicial exception to the statutory classes of invention eligible for the grant of a US patent. The computer-program product in claim 129 is not explicitly claimed as embodied in a computer-readable medium, therefore the scope of the claim must include the case, for example, where the program is read by a user and then manually entered into a computer by using an input interface such as a keyboard. The memory medium storing the program is not read out by the computer and therefore it is not a computer component. The

memory medium cannot effect a change of state of a processor so as to produce a tangible result. See MPEP 2106[R-6]. Claims 130-147 are dependent on claim 129 and do not cure its deficiency. Therefore, claims 130-147 are rejected on the same basis as claim 129.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 8 and 40-54 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As for claim 8, the claim recites the phrase: "...wherein the step of creating a package comprises an executable..." The meaning of the phrase is not clear. An executable is a compiled computer program, not a method step in a process.

As for claim 40, the claim recites the phrase in the preamble of: "A method according to claim 5 for providing data security in a first device driver..." There is a lack of antecedent basis for this limitation since claim 5 and its base claims do not contain any limitation directed to providing data security in a device driver. Claims 41-54 are dependent on claim 40 and are therefore rejected on the same basis as that claim.

As for claim 50, the claim recites the phrase: "...the step of destroying the data..." There is a lack of antecedent basis for this limitation. Claim 51 is dependent on claim 50 is rejected on the same basis as that claim.

### ***Allowable Subject Matter***

6. Claims 1-7, 9-39, 55-95, and 108-128, 148 and 149 are allowed.

### ***Conclusion***

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul E. Callahan whose telephone number is (571) 272-3869. The examiner can normally be reached on M-F from 9 to 5.

If attempts to reach the examiner by telephone are unsuccessful, the Examiner's supervisor, Emmanuel Moise, can be reached on (571) 272-3865. The fax phone number for the organization where this application or proceeding is assigned is: (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

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you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Paul Callahan/

February 15, 2008

/Emmanuel L. Moise/

Supervisory Patent Examiner, Art Unit 2137